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The Perpetual War: Pirates and Creators

By EDUARDO PORTER FEB. 4, 2012

From book publishers like Macmillan to Hollywood studios like Disney, producers of content are deeply frustrated by the defeat of their efforts to curb online piracy in Congress last month. The bill they favored was flawed, and could have inhibited expression on the Web. But their concern is spot on: the rampant piracy enabled by the Internet undermines the very economics of creative industries.

Online piracy is growing by leaps and bounds, as the first chart shows. The use of peer-to-peer and cyberlocker sites, most of it for illegal sharing, amounts to over one-fourth of all Internet traffic, according to Cisco Systems' Visual Networking Index. And while that fraction is expected to shrink as legal services like Internet video expand, file-sharing is still expected to grow about 23 percent annually, on average, until 2015. The Recording Industry Association of America says that four out of five digital music downloads are illegal.

Piracy's effects on the economy as a whole are hard to measure. Studies used by the supporters of the defeated piracy legislation have tended to exaggerate piracy's economic costs and threat to jobs. For example, they often omit the fact that money not spent on music or movies is likely to be spent on something else. Nonetheless, piracy does hurt the industries that rely on copyright to protect their creations.

Consider the record labels' plunging sales since the music-sharing service Napster made large-scale piracy easy a decade ago. Album sales, including digital singles added up into album equivalents, fell from 755 million in 1999 to 458 million last year, according to Nielsen SoundScan. The top album in 1999, "Millennium" by

MOTION FOR LEAVE TO SERVE THIRD PARTY SUBPOENAS [ETC.]

Exhibit A

the Backstreet Boys, sold 9.4 million copies. The top 2011 album, Adele's "21," sold 5.8 million.

Hollywood was hit by piracy somewhat later because movie files are bigger and require more Internet bandwidth. But home entertainment sales — a huge chunk of movie revenues — fell every year from 2004 to 2010. While box-office revenues have benefited from rising ticket prices, movie attendance has been steadily declining. The Oscar-winning "Hurt Locker," for instance, had a worldwide box office of only \$49 million but was downloaded illegally seven million times, according to TorrentFreak, a Web site about file-sharing.

Publishers embraced e-books only a few years ago. In 2010, 1.5 to 3 million people were looking for free pirated copies of books every day, according to an analysis of global Internet searches by Attributor, a Web monitoring company. Of course, not every pirated download displaces the sale of a book, album or movie. But when it comes to music, most economic studies have concluded that piracy accounts for the vast majority or even entirety of the sales decline.

Many Internet enthusiasts say that this change isn't unhealthy, and that the Web makes more ventures possible. They point out that while piracy may be cutting the pay of record label executives, it doesn't seem to have stopped musicians from making new music. According to Nielsen, 75,300 albums were released in 2010, 25 percent more than in 2005. But new releases that sold more than 1,000 copies fell to about 4,700 from 8,000 during that time. The wave of creation that is more hobby than profession has little to do with piracy, and would likely be unaffected by laws to curb illicit downloads.

But if professional musicians, movie directors and writers can't make money from their art, they will probably make less of it. Independent producers say piracy is already making it harder to raise money for small and mid-budget movies.

Stopping piracy is about protecting creativity — and the many occupations it supports (think pop band or sound mixer). If we value what creative industries produce as much as we say we do, Congress will have to find a way to protect it without limiting speech.

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Exhibit A

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Exhibit A